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CLEAN AIR ACT AMENDMENTS OF 1976

SUMMARY OF THE BILL (H.R. 10498)

AS REPORTED BY THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

PREPARED BY THE STAFF

FOR THE USE OF THE

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CLEAN AIR ACT AMENDMENTS OF
1976 (H.R. 10498)

SUMMARY OF THE BILL

The Interstate and Foreign Commerce Committee ordered reported H.R. 10498, the Clean Air Amendments of 1976, as amended, on March 18, 1976. These amendments represent the first significant Congressional review of the Clean Air Act since the 1970 Amendments.1/

In adopting the 1976 Amendments the Committee intended to accomplish several objectives:

(1) to authorize relaxation or revision of standards or deadlines where lack of technology, energy, shortages, or other factors make such flexibility necessary;

(2) to provide a greater role for State and local governments in planning and execution of air pollution control strategies, and to minimize the Federal role;

(3) to direct the Administrator to consider energy and economic impacts to a greater extent in standard setting under the Act;

(4) to clarify issues under the present law which have been addressed, but not finally resolved, by the courts;

(5) to provide new authorities to deal with environmental problems that were not addressed in earlier legislation; and

(6) to continue and improve methods for protection of the public health.2/

1/ Amendments on auto emissions and coal conversion extensions were adopted in the "Energy Supply and Environmental Coordination Act of 1974" (P.L. 93-319).

2/ Dissenting Members either did not agree that these purposes would be achieved or opposed the provisions on their belief that other adverse ramifications would result.

SECTION 1 -- SHORT TITLE

SECTION 2 -- AUTHORIZATIONS

This bill authorizes appropriations of $200,000,000 for FY 1977; $200,000,000 for FY 1978; and $200,000,000 for FY 1979. None of this authorization is for research activities under the Clean Air Act. Authorizations for research are handled by the Committee on Science and Technology. Authorizations of appropriations for the entire Clean Air Act, including research, were $300,000,000 for FY 1975.

SECTION 101 -- UNREGULATED POLLUTANTS

This section requires the Administrator to promulgate regulations to control several currently unregulated air pollutants, unless the Administrator finds within one year that these pollutants are not hazardous to public health. The pollutants in question are vinyl chloride, cadmium, arsenic, and polycyclic organic matter (POM's).

This section also requires the Administrator to promulgate a one-hour national primary ambient air quality standard for NO_2, unless the Administrator finds that the present annual average standard for NO_2 is adequate to protect public health.

The section also requires the Administrator to study these unregulated pollutants and includes sulfates within the scope of the study.

SECTION 102 -- BASIS OF ADMINISTRATIVE STANDARDS

This section establishes the standard of proof which the Administrator must meet before promulgating regulations controlling the emission of any air pollutant from any class of sources under this Act. Regulation is authorized only if emissions of the pollutants from that class of sources contribute to air pollution which "may reasonably be anticipated to endanger public health or welfare."

SECTION 103 -- COMPLIANCE DATE EXTENSIONS (STATIONARY SOURCES)

This section authorizes the States and the Administrator to grant extensions of compliance deadlines for stationary sources under the State implementation plans. An extension may be granted for up to five years. An extension may only be granted after notice and a formal hearing on the record.

There are six grounds upon which an extension may be granted; (1) the lack of adequately demonstrated technology to meet necessary emission limitations; (2) a shortage of clean fuels or technology (which has been adequately demonstrated); (3) unavailability of means of compliance due to strike, embargo, or other emergency; (4) delay of construction of a replacement facility; (5) temporary unavailability of financing for procurement of clean fuels or technology; (6) to encourage use of innovative emission control technology.

This section also provides that existing non-ferrous metal smelters could be granted up to two compliance date extensions not to exceed five years each in length for the purpose of permitting it to use emissions systems other than those ordinarily required when means of compliance are shown to be not reasonably available. The Administrator could only terminate the extension if it is found after a full adjudicatory hearing, that means of compliance have become reasonably available. As conditions to the granting of an extension under this provision the smelter must, first, agree to comply with requirements which are needed to maximize reliability and enforceability of the alternately used control measures and, second, any violation of any national ambient air quality standard within a designed liability area would be considered to be a violation of the State implementation plan.

Sources receiving extensions must meet compliance schedules and use the best interim control measures during the extension period.

SECTION 104 -- ASSESSMENT OF CIVIL PENALTIES

This section authorizes the courts to impose civil penalties of up to $25,000 per day for violations of the Clean Air Act. The courts are directed to take into account the size of the business, and the seriousness of the violation, in setting the amount of the penalty.

SECTION 105 -- EXCESS EMISSION FEES

If a major stationary source receives a compliance date extension (see sec. 103) and the reasons for the source's inability to comply with applicable emission limitations were not primarily beyond its control, then it must pay an excess emission fee.

The amount of the fee is to be based on a schedule of rates promulgated by the Administrator. The schedule of rates must be designed (1) to prevent any extension from creating a competitive disadvantage for sources receiving an extension (over those sources which comply on time) and, (2) to encourage compliance as rapidly as practicable.

The fee may not exceed $5,000 per day. The Administrator is authorized to reduce or mitigate the fee for any source under certain specified conditions. The fee may only be applied to major stationary sources, i.e. those which emit over 100 tons of pollutant per year.

As with other provisions of the Act, judicial review of action of the Administrator under this section is expressly authorized.

The Committee's intended purposes in adopting the excess emission fee are: (1) to encourage good faith efforts to comply; (2) to prevent noncomplying sources from gaining an advantage over complying sources with whom they compete; (3) to permit a middle course of action to be followed in case of noncompliance, rather than plant shutdowns or noncompliance without penalty.3/

3/ See footnote 2.

SECTION 106 -- COAL CONVERSION

This section deals with two main subjects: (1) compliance date extensions for sources prohibited from burning oil or natural gas, or both; and (2) whether to require continuous or intermittent control of pollutants from stationary sources.

Coal Conversion. -- This section amends section 119 of the Clean Air Act, as adopted by the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-319). It permits compliance date extensions for sources converting to coal to last until 1980, instead of 1979, as under existing law. A further extension up to as late as 1985 could be granted under section 103 of the bill.

The amendments to P.L. 93-319 also permit extensions for those coal burning sources (subject to an FEA order not to switch to oil or natural gas), which had earlier intended to meet applicable emission limits by switching to one of these fuels and had earlier received a variance or plan revision to do so. Under existing law, extensions are not authorized for these sources.

Also under current law, a source which is ordered to convert from burning petroleum products or natural gas to coal may not receive an extension of an emission limitation for any pollutant if the air quality anywhere in the region exceeds the primary health standard for that pollutant. This is called the "regional limitation". This new section would make the "regional limitation" rebuttable (and thus permit extension) upon certain findings.

This section also requires concurrence by the Governor as a condition for granting this type of extension. Concurrence by the Governor is not required under existing law.

Continuous Controls. -- The amendments also affirm the decisions of three U.S. Court of Appeals cases that the Act requires continuous emission reduction measures to be applied. Thus, intermittent control measures (to be applied only in case of adverse weather conditions), increasing stack heights, or other pollution dispersion techniques would not be permitted as final compliance strategies.

The Committee's intended purpose in adopting this amendment was to ensure the use of control measures which (1) would be reliable and enforceable; (2) would reduce overall pollution exposures to regulated pollutants (and to uncontrolled derivative pollutants, such as sulfates); (3) prevent spreading the pollution to presently clean areas; (4) leave more air resources for the growth of new industry and jobs.4/

4/ See footnote 2.

SECTION 107 -- STRATOSPHERE AND OZONE PROTECTION

This amendment provides for a two-year study on the cumulative effects of various substances and activities on the stratospheric ozone layer, which screens and limits solar radiation exposures on Earth. The study is to be conducted by the Administrator, in cooperation with the National Academy of Sciences, and an interagency task force.

At the end of the two-year study (or earlier under specified circumstances), the Administrator may, upon making certain findings, promulgate regulations to protect the stratospheric ozone layer. Such regulations may be promulgated only if the Administrator finds that the ozone layer (and public health or welfare) may reasonably be anticipated to be endangered. Regulations are required to take into consideration feasibility and costs of controlling any dangerous substance or activity.

Regulations must be submitted to Congress and may not take effect for 60 legislative days after submission. If either House passes a disapproval resolution within that 60 day period, the portion of the regulations which have been disapproved may not become effective. Expedited consideration by Congress is provided for. The bill would preempt State or local regulations once Federal regulations become effective, but would preserve the right of a State to adopt and enforce more stringent regulation of aerosol spray emissions if it so chooses.

SECTION 108 -- PREVENTION OF SIGNIFICANT DETERIORATION

In 1972, the Supreme Court by a 4-4 vote upheld a lower court decision which ruled that the Clean Air Act required "prevention of significant deterioration" of air quality in clean air areas of the country. The court did not define what constituted "significant deterioration" or require specific measures to prevent it.

In response to the Court's order, the Administrator has promulgated regulations which are now in effect to "prevent significant deterioration".

The Committee's intended purposes in adopting this provision are: (1) to affirm the decision that the Act requires a policy of prevention of significant deterioration; (2) to provide additional Congressional guidance to specify what "significant deterioration" is and how it must be prevented; (3) to delete the current EPA regulations and to substitute a system which gives a greater role to the States and local governments and which restricts the Federal government in the following ways:

(a) The Committee bill removes the Federal land manager's authority to control classification of Federal lands, which is contained in the EPA regulations.

(b) The Committee bill eliminates the authority which the Administrator has under current EPA regulations to

override a State's classification of any area on the ground that the State improperly weighed energy, environment, and other factors.

(c) The Committee bill prohibits the Administrator from compelling any State to impose any uniform or automatic no growth buffer zone around any area.

(d) The Committee provides for a local role in decision-making, while the current EPA regulations provide for no such local role; and

(e) The Committee bill fixes allowable increments and removes the Administrator's authority to prescribe more or less strict requirements.5/

Purposes. -- The section has several stated purposes:

5/ See footnote 2.

(1) to protect health from harmful exposures occurring at levels below the ambient standards;

(2) to protect national parks and other areas of special natural, recreational, scenic, or historic value;

(3) to prevent competition for industry among States to be waged by allowing significant deterioration of air quality;

(4) to prevent interstate air pollution which significantly degrades air quality;

(5) to assure careful evaluation of all consequences and opportunity for full public participation prior to a State's decision allowing deterioration in existing clean air areas.

Area Classified Plans. -- Each State must classify those areas which are cleaner than the national ambient air quality standards as Class I, Class II, or Class III for all pollutants for which national ambient air quality standards are established. However, for any pollutant other than sulfur dioxide or particulates, a State may develop any other measures to prevent significant deterioration, and the Administrator must approve the State's plan if he determines that the State's plan will carry out the purposes stated above at least as effectively as an area classification plan.

Initial Classification of Areas. -- Initially most areas which are cleaner than the ambient standards would be classified as Class II. The provision restricts Mandatory Class I areas to national parks and national wilderness areas, which exceed 25,000 acres in size. Wilderness areas, national parks and international parks between 10,000 and 25,000 acres, as well as national preserves, national monuments, national recreation areas, and national primitive areas in excess of 25,000 acres would be Discretionary Class I areas. These Discretionary Class I areas would convey Class I status initially with subsequent reclassification to Class II possible at the discretion of the State. According to Administration estimates, the Mandatory Class I areas amount to less than 3 per cent of the Federally-owned lands in the United States.

Reclassification of Areas. -- In general, the State would be free to reclassify areas as Class I, II, or III at any time. Reclassification must be preceded by a public hearing and preparation of an analysis of the health, environmental, economic, social and energy effects of the proposed reclassification. Any reclassification of a Federal land area initially classified as Class I and any reclassification of any areas to Class III must be approved by appropriate local governments and the State legislature and must not interfere with the classification of any other area. Discretionary Class I areas (listed above) may only be reclassified as Class II.

The Administrator is not authorized to disapprove any State's reclassification, unless the reclassification violates one of the aforementioned requirements or limitations.

Effect of Area's Classification. -- Depending on an area's classification, the following limitations will apply to that area:

ALLOWABLE POLLUTION INCREMENTS AND
ALLOWABLE POLLUTION CEILINGS

	Allowable increments	Allowable ceilings
Class I	2 percent of lowest national standard (all pollutants, except particulate). 10 percent of lowest national standard for (particulate).	90 percent of lowest national primary standard (all pollutants).
Class II	25 percent of lowest national standard (all pollutants)	Do.
Class III	50 percent of lowest national standard (all pollutants)	Do.

An "allowable increment" refers to the amount of increase in pollution in any area which is permissible above a baseline pollution level. The baseline pollution level is the level of pollution calculated to exist, assuming (1) plant capacities in being on January 6, 1975 (when the classification systems first became effective under the Administrator's regulations), and (2) additional plant capacities for new sources which receive new source permits prior to date of enactment. (The baseline level is not limited to, but includes, the natural or background pollution levels in existence prior to any industrial activity). The allowable increment is the amount of increased pollution permissible beyond baseline levels for any area. Thus, sources in existence on date of enactment will not be subject to control under this section, because pollution from existing sources is included in the baseline. No rollback in emissions from existing sources would be required, whether an area is classified as Class I, II, or III.

The Committee bill would authorize the Governor to grant a variance or exclusion, so as not to count against the allowable increment, pollution increases due to: (1) coal conversions or natural gas curtailments; (2) particulate pollution due to construction or other temporary activities, such as seasonal open burning; (3) new foreign sources of pollution; and (4) background or naturally occurring particulates.

An "allowable ceiling" refers to the absolute pollution levels which may not be exceeded as a result of increases in pollution beyond the baseline for any area. It does not refer to any particular amount of permissible increase. New sources thus would not be permitted to cause or contribute to air pollution concentrations exceeding 90 per cent of the lowest national primary ambient air quality standard in any area, regardless of whether the area is classified I, II, or III.

Permit provisions. -- Only new or modified major stationary sources are required to obtain a State permit prior to construction. A major stationary source is defined to include only those direct pollution sources with design capacity to emit 100 tons or more pollutant per year. Thus, indirect and mobile sources, and stationary sources emitting less than 100 tons per year, would not be subject to State permit provisions.

The permit program is to be operated by States. The purpose of the permit is to assure that the allowable increments and allowable ceilings will not be exceeded as a result of emissions from any new or modified major stationary source. States may issue permits based on less than one year of prior air quality monitoring, if the Administrator finds that an adequate analysis of the air quality impact of any major stationary source can be achieved within a shorter period.

Deadlines. -- State plans for control of sulfur dioxides and particulates must be submitted within one year after date of enactment. State plans for other pollutants must be submitted within two years. The Administrator must approve the plan within four months, if it meets applicable requirements. If not, the Administrator must propose a plan for that State within four months after disapproval and promulgate it within 90 days (but after notice and public hearing) if the State in the meantime has failed to submit an approvable plan.

SECTION 109 -- TRAINING

This section prohibits the Administrator from charging fees for training of personnel employed by State or local air pollution control agencies. Until recently, training was provided free of charge to such employees. However, pursuant to directive of the Office of Management and Budget fees of up to $90/day have been imposed on State and local governments. The Committee felt that the imposition of fees on such personnel would be inconsistent with the overriding objective of encouraging State and local governments to assume primary responsibility for implementing and enforcing the Act.

SECTION 110 -- REVIEW OF STANDARDS

This section requires the Administrator to review the technical criteria and national ambient air quality standards at least once every two years and to revise the standards and promulgate new ones as appropriate. In deciding whether revision or promulgation of new standards is necessary, the Administrator must consider the advice of an independent scientific review committee. The committee is to be comprised of seven members, including at least one physician, one representative of the National Academy of Sciences, and one person representing State and territorial air pollution administrators.

SECTION 111 -- NEW SOURCE STANDARDS OF PERFORMANCE

The existing Clean Air Act requires the promulgation of nationally applicable standards of performance (emission standards) for new or modified major stationary sources of pollution. This section amends that provision to require that major new sources meet standards based on the degree of control achievable through use of the best technological system of continuous emission reduction.

This amendment makes four significant changes. First, it clarifies that intermittent or alternative control measures are not permissible means of compliance. Second, it indicates that adequately demonstrated technology is to be the basis of the standard, not merely reliance on use of untreated fuels. Third, it requires the Administrator to take into account energy requirements (in addition to costs) in determining which technologies have been adequately demonstrated. Fourth, it requires the Administrator to consider non-air quality health and environmental impacts in making that determination.

The section also makes clear that standards adopted for existing sources under section 111(d) of the Act are to be based on available means of emission control (not necessarily technological) and must, unless the State decides to be more stringent, take into account the remaining useful life of the existing sources.

This section also contains authority for the Governor of a State to petition the Administrator to compel him to issue new source performance standards for industries which have not yet been covered by such standards, to issue revised standards when better technology becomes adequately demonstrated, or to cover unregulated pollutants for which Federal new source performance standards or hazardous emission standards have not been set. The Committee's intended purposes in adopting this amendment are: (1) to provide a greater role for the States in standard setting under the Act; (2) to assure that industries do not play off States with weak or no environmental controls against States with stronger controls in decisions to locate new sources; and (3) to provide a check on the Administrator's inaction or failure to control emissions adequately.6/

6/ See footnote 2.

SECTION 112 -- VARIANCES FOR TECHNOLOGY INNOVATIONS

This section authorizes the Administrator to grant a variance from Federal new source standards of performance in order to encourage development and application of new, improved, but as yet not adequately demonstrated, technological systems for meeting the standards.

In order to grant the variance the Administrator must find that there is a substantial likelihood that the new technology would achieve greater emission reduction than presently required or would achieve equivalent emission reduction at lower economic, energy, or environmental costs. The Administrator must also be satisfied that the new technology will not cause or contribute to an unreasonable risk to health, welfare, or safety. A third condition for granting the variance is that the Governor of the State where the new source intends to locate consents to the variance. Fourth, all national ambient air quality standards must be attained and maintained. Fifth, the number of variances must be limited to the amount necessary to test the new technology.

A variance is limited in duration to ten years from date of issuance or the date on which the Administrator finds the new technology is an irremediable failure, whichever is sooner. In case of such an uncorrectable failure, the Administrator is required to allow additional time for the source to obtain and use technology which has been adequately demonstrated to meet the standards.

SECTION 113 -- FEDERAL FACILITIES

The purposes of this provision are several: (1) to clarify that section 118 of the existing Clean Air Act constitutes a waiver of sovereign immunity, such that Federal facilities and persons operating them must comply with all State and local air pollution control requirements; (2) to clarify that the Federal facilities must comply with "procedural" as well as "substantive" requirements; and (3) to authorize enforcement against such facilities and persons by the same means as for any non-Federal source.

These requirements continue to be subject to the President's authority to grant exemptions under section 118 of the existing Act.

SECTION 114 -- WAIVER OF MAINTENANCE OF EFFORT

This section would authorize the Administrator to waive the maintenance of effort requirement in existing law (and thus to continue giving State and local program grants), if the Administrator finds there is good cause for granting such a waiver. This provision is intended to permit continued Federal assistance to State or local air pollution control programs, where fiscal emergencies have necessitated general across-the-board reductions in State and local spending.

SECTION 115 -- VARIANCES FOR INDUSTRIAL EXPANSION OR GROWTH

Under the existing Clean Air Act, no new emission source may be constructed in an area which is already exceeding the national ambient air quality standard after the date specified for attainment of that standard. Under the existing Act, the attainment date is supposed to be 1975 or 1977 at the latest. Thus, in many regions that have not yet reached the national ambient standards, growth could be curtailed altogether.

In order to permit flexibility so that an immediate growth ban would not be required in these major metropolitan regions, the Committee adopted this section. The section authorizes the States or the Administrator to grant a variance which would permit new construction or expansion of existing facilities in these areas. Under the variance, a company which owns or operates existing sources would be permitted to obtain such a variance if it shows that all existing sources owned by the company are in compliance with emission limits or schedules for compliance. Also the proposed new or expanded facility would have to be equipped with the best available control technology.

At no time would a variance be permitted to increase allowable emission levels by more than 15 per cent of that permitted by the State plans. By 1980, the company's total emissions from the new and existing facilities could not exceed 100 per cent of what had previously been allowed from the existing facilities alone. No variance under this section could have the effect of delaying the date that the national ambient standards would be attained.

SECTION 201 -- LIMITATIONS ON INDIRECT SOURCE REVIEWS AUTHORITY

This section establishes several limitations upon the Administration's authority to require State or local governments to adopt or implement indirect source review programs. An indirect source is a facility or property which although it does not directly pollute the air, does attract traffic in sufficient amounts to cause or contribute to unhealthy levels of air pollution.

First, before an indirect source review program can be required to be implemented in any area, the Administrator must find that such a program is necessary, i.e., that the national primary (health-related) ambient air quality standards will be exceeded after the statutory deadlines for attainment and maintenance of such standards notwithstanding the new motor vehicle emission standards and application of direct stationary source and transportation controls. In making the finding of necessity, the Administrator is directed to assume that the requirements originally applicable to 1975 and 1976 new cars under the 1970 Act were met on time, instead of delayed. This assumption reduces the likelihood that the determination of necessity will be made for any area.

The second limitation is that the Administrator may not require such a program unless the program is likely to be effective to assist in attaining or maintaining the primary (health) standards. In making this finding, the Administrator must take into account the advice of the National Academy of Sciences, which is directed to undertake an independent study of this issue.

The third limitation, which applies to most informal rulemaking under the Act, is that the Administrator must follow the procedural requirements established under section 305 of the bill. Findings of the Administrator pertaining to the efficacy and necessity of indirect source review programs would be subject to judicial review in connection with review of any regulation promulgated by the Administrator.

The fourth limitation is that even if such programs are found to be necessary and effective and even if procedural requirements are met, the Administrator may not impose or administer Federal regulations for indirect sources. The programs are to be carried out by State or local governments. If a State fails to adopt or enforce an adequate program, the Administrator has only one remedy. He may petition the court to prevent construction of new indirect sources which do not have permits from approved State programs. The only exception to the rule against Federal implementation of indirect source review programs is with respect to indirect sources owned, operated or assisted by the Federal government.

The fifth limitation is that the Administrator is not authorized to review the State's individual indirect source permit decisions. Only if the State improperly granted permits in a substantial number of instances could the Administrator act to disapprove a program previously approved under this section. Even then, the effect of the disapproval would only be prospective (i.e., permits which had previously been issued by the State could not be revoked).

The sixth limitation is that the Administrator must permit Governors to grant variances from Federally-approved State programs under certain specified conditions, even though the effect of such variances is to permit air pollution levels in excess of the primary (health) standards. Variances may last until as late as January 1, 1985, in the Governor's discretion. At the expiration of any variance, the indirect source will be required to conform to the State's implementation plan, which must then attain and maintain primary standards.

The seventh limitation relates to timetables under this section. Under the statutory timetables, indirect source review programs would probably not become effective until 39 months after date of enactment. During this period, States and localities would be free to revoke or suspend any existing indirect source programs or to adopt and enforce any indirect source program. The Administrator may not compel or prohibit any such action during this interim period.

In related provisions, the Committee agreed to delete from the Clean Air Act the words "land use" controls. Where necessary for attainment or maintenance of national ambient air quality standards, air quality maintenance plans and preconstruction review of direct pollution sources are provided. Even these measures could not be required if a State adopts a plan which is adequate to assure timely attainment and maintenance of the national ambient air quality standards without such measures.

SECTION 202 -- EXTENSION OF TRANSPORTATION CONTROL COMPLIANCE DATES

This section authorizes the Administrator to extend the compliance deadlines for implementation of various transportation control measures which, under current law, are required to become effective not later than June 30, 1977. If the control measures in question could not be implemented in accordance with current timetables without serious social or economic disruption, then the Administrator may grant an extension.

An extension may last until as late as January 1, 1985. It may be granted even though failure to implement the measure as originally scheduled would cause or contribute to pollution levels exceeding national primary (health) ambient air quality standards.

If an extension is granted, the measure extended must be implemented according to a new schedule of compliance. In general, the measure would have to be implemented as expeditiously as practicable. Extensions beyond January 1, 1980, are authorized only where commitments are made as part of the plan to improve public transportation.

In addition to the extensions authorized by this section, the deletion of certain measures from Federally-approved State plans is authorized. The measures authorized to be deleted involve certain gas rationing provisions and certain vehicle retrofit requirements applicable to in-use vehicles. If the State's plan is no longer adequate to assure timely attainment and maintenance of the national primary (health) standards without such strategies, it would have to be revised within nine months.

The mere fact that a State obtains an extension of any transportation control measure does not provide basis for the Administrator to require revision of the State plan. The State may not be required to revise its plan to include more stringent measures if the plan would have been adequate but for the granting of any extension under this section.

The section does require the Administrator to review all State plans not later than one year after date of enactment, to determine their adequacy. This review was felt by the Committee to be necessary in light of such events as the administrative suspensions and Congressional action delaying auto emission standard deadlines, the prohibition on parking surcharge requirements, and the unworkability of certain strategies included initially in the State plans. If the State plan is not adequate even assuming no delays had been granted under these Amendments, then the plan would have to be revised by the State, in accordance with provisions of existing law pertaining to plan revision.

The term "transporation control measure" is defined to exclude all regulation of parking. The purpose of this exclusion is to assure that all regulation of parking is subject to the limitations of section 201 on regulation of indirect sources.

SECTION 203 -- LIGHT-DUTY MOTOR VEHICLE EMISSIONS

Under this provision, statutory emission standards for new automobiles and other light-duty vehicles (requiring a 90% reduction in HC and CO emissions) would be delayed until model year 1980. During model years 1978 and 1979, standards would be frozen at 1975 Federal interim standards. While the full 90% reduction would be required for HC and CO in model year 1980, in the case of the NOx standard, the full 90% reduction would not have to be achieved until model year 1981. Even, then, the Administrator would be authorized to suspend the NOx standard (for model years 1981-84), setting higher interim levels upon a determination that: (1) it is not technologically feasible to meet the standard within the time permitted; or (2) meeting the 90 per cent reduction requirement would result in an excessive fuel penalty.

Thus, applicable Federal standards would be as follows:

	HC(gm/mi)	CO(gm/mi)	NOx(gm/mi)	
1975-6	1.5	15.0	3.1	
1977-9	1.5	15.0	2.0	
1980	.41	3.4	2.0	
1981-4	.41	3.4	.4	(with possible waiver)
1985	.41	3.4	.4	

The Administrator would be authorized to grant up to four one-year suspensions of the NOx standard, indicated above. The maximum allowable interim standard would be as follows:

	NOx gm/mi
1981	2.0
1982	2.0
1983	1.5
1984	1.5

The section also authorizes the Administrator to grant one or more waivers of the 90 per cent reduction requirements for HC, CO, or NOx for model years 1980-4, if (1) a sulfate emission standard is promulgated by the Administrator, and (2) it is not feasible to meet the HC, CO, NOx, and sulfate standards, or meeting all these standards would result in an excessive fuel penalty.

The full 90 per cent reduction in NOx would not have to be achieved under a separate provision of this section. If the manufacturer of any model could demonstrate that its vehicles could meet the following standards for 10 years or 100,000 miles (instead of the usual five years or 50,000 miles), then compliance with the .4 NOx standard would not be required for that model.

	gm/mi
HC	.41
CO	3.4
NOx	1.0

The Committee's intended purpose in adopting this provision is to create an incentive for development of inherently clean and durable technologies while continuing to provide protection of public health from automotive emissions.7/

The section also requires the Administrator to study and report annually to Congress on unregulated pollutants being emitted from various systems (controlled and uncontrolled).

Finally, the section makes it a prohibited act for any manufacturer seeking a suspension to have failed to make maximum feasible efforts for that manufacturer to develop a system which could meet the standards without an excess fuel penalty.

SECTION 204 -- EMISSIONS FROM HEAVY-DUTY VEHICLES OR ENGINES AND FROM MOTORCYCLES

This section requires the Administrator to promulgate emission standards for model years 1978-1984 new heavy-duty trucks, buses, and motorcycles based on use of the best technology which has been adequately demonstrated. For 1985 and subsequent model years, standards must require a 90 per cent reduction of hydrocarbons (HC), carbon monoxide (CO), and a 65 per cent reduction of oxides of nitrogen (NOx) from baseline levels, i.e. uncontrolled levels emitted by gasoline-powered vehicles or engines of a comparable class or category. Standards under this section would apply both to gasoline and diesel-powered vehicles and engines.

Upon making certain findings regarding technical infeasibility or fuel economy penalties, the Administrator may in 1979 grant a variance (i.e. relaxation) of the 1985-7 standards for any class or category of vehicles or engines. Additional revisions of up to three years each could be granted at three-year intervals thereafter if the requisite findings are made. At the end of each revision period, the standards would revert to a requirement for reductions of 90 per cent for HC and CO and 65 per cent for NOx.

The section also provides for pollutant specific health studies to be undertaken on HC, CO, NOx, and particulates. If these studies justified setting other targets (either more or less stringent), then the 90 per cent reduction figures for HC or CO or the 65 per cent reduction figure for NOx could be changed or a particulate target level could be set.

In the event a vehicle or engine fails to meet the revised standards, it may nonetheless be permitted to be sold so long as the degree of nonconformity is within a range prescribed by rule by the Administrator and the manufacturer pays a nonconforming technology penalty. Also the section requires production line testing of heavy-duty vehicles or engines.

In setting and revising standards under this section the Administrator may subdivide heavy-duty vehicles or engines into classes or subclasses, by weight, horse-power or other appropriate factors.

The term "heavy-duty vehicle" is defined to mean vehicles (including trucks and buses) weighing over 6,000 pounds. The term excludes fixed rail vehicles and vehicles (such as farm equipment) which are not designed primarily for use on highways or roads.

7/ See footnote 2.

SECTION 205 -- AIRCRAFT EMISSION STANDARDS

This section authorizes the Secretary of Transportation to disapprove at any time any aircraft emission standard promulgated by the Administrator, if DOT finds the standard would create a hazard to aircraft safety. If DOT disapproves, then the emission standard would cease to be effective (or may not take effect, if the standard is yet to take effect). Also under this section, the Administrator must promulgate standards for non-military supersonic aircraft within 12 months of date of enactment.

SECTION 206 -- ASSURANCE OF PROTECTION OF PUBLIC EHALTH AND SAFETY

This section requires the manufacturers of new motor vehicles or new mo or vehicle engines to bear the burden of proving, as a condition of obtaining a certificate of conformity, that the emission control systems or devices that are to be used to meet emission standards will not produce unregulated pollutants in concentrations which create an unreasonable risk to public health or welfare. The manufacturer must also prove the safety of any such system or device.

SECTION 207 -- TEST PROCEDURES FOR MEASURING EVAPORATIVE EMISSIONS

Recent information demonstrates that the methods used by the Administrator and the State of California to measure evaporative emissions from new motor vehicles have failed to capture and thus to record the bulk of evaporative emissions which actually occur. Consequently, California has revised its test procedure to use a method which measures all evaporative emissions. This section requires the Administrator to use test procedures which measure all evaporative emissions, effective for model year 1978 light-duty vehicles (and 1978 or later for heavy-duty vehicles or engines).

SECTION 208 -- RAILROAD LOCOMOTIVE EMISSION STANDARDS

This section establishes a new part C of title II of the Clean Air Act (new sections 235-7). The new subtitle directs the Administrator to study the extent to which emissions from railroad locomotives affect air quality and the technological feasibility of controlling such emissions. Within one year after date of enactment, the Administrator would be required to promulgate national emission standards for railroad locomotives and equipment.

As in the area of aircraft safety, the Secretary of Transportation may disapprove any emission standard under this section promulgated by the Administrator if he finds it would create a hazard to railroad safety. The Secretary of Transportation also is given responsibility for enforcing the railroad emission standards.

Once standards are promulgated States and local governments would be preempted from adopting or enforcing emission standards which are not identical to the Federal standards.

SECTION 209 -- MOTOR VEHICLE PARTS CERTIFICATION AND STUDY BY FTC

This section was adopted in order to address the problem of potentially anti-competitive effects of the 5-year/50,000-mile performance warranty under section 207(b) of the existing Clean Air Act. Although the warranty in question has not become effective yet (and according to the Administrator, is unlikely to become effective prior to model year 1979 vehicles), the Committee was concerned that unless certain preventive measures were put into effect prior to the effective date of the warranty, the warranty may result in anti-competitive effects harmful to small business, the marketplace, and consumers as well.

In response to these concerns, the new section changes the duration of the performance warranty under section 207(b) from 5 years or 50,000 miles to 18 months or 18,000 miles. The design warranties under section 207(a), the recall authority under section 207(c), the certification and assembly-line test provisions under section 206, and the "useful life" definition under section 202(d) are not affected by this change.

This section, secondly, requires the Administrator to promulgate regulations within two years after date of enactment establishing a voluntary parts certification program. Under this program, the manufacturer of any motor vehicle part could certify that use of that part in specified vehicles or engines would not result in a failure of the vehicle to meet emission standards. The use of a certified part would not provide grounds for the vehicle manufacturer to invalidate the customer's performance warranty, even though the part may have been manufactured and sold by an independent parts supplier and installed by an independent garage.

Third, the new section requires the Federal Trade Commission to study regulations promulgated by the Administrator. If the FTC finds that in light of the Administrator's regulations no significant anticompetitive effects would result from a 5-year/50,000-mile performance warranty, then the 5-year/50,000-mile performance warranty would be restored.

SECTION 210 -- VEHICLE INSPECTION AND MAINTENANCE

This section requires annual inspection of light-duty vehicles which are registered to persons who live or maintain their principal place of business in an air quality control region where transportation control measures apply as of June 30, 1975. Thus, the provision only applies to 29 cities and surrounding areas, where the national primary ambient air quality standards for mobile source-related pollutants are being exceeded. The purpose of the annual inspection is to assure that vehicles will remain relatively non-polluting in use.

The section is patterned on the New Jersey inspection and maintenance program which has been in effect for well over a year. The section establishes standards applicable to in-use vehicles. The standards reflect that

degree of emission control which is achievable by in-use vehicles which are maintained reasonably well. The standards do not apply to pre-1968 vehicles, antique cars, and certain other vehicles.

If a vehicle is found not to be in compliance with the standards as a result of the emission inspection, then the operation or registration of the vehicle would be prohibited, with certain exceptions. The exceptions are as follows: (1) a noncomplying vehicle may be operated for a temporary period to permit the vehicle to be brought into compliance; and (2) a non-complying vehicle may be operated and registered if it has received a major tune-up within three months prior to the inspection or thereafter. States would retain authority to impose more stringent requirements, but the Administrator would not be authorized to compel the States to do so.

The inspection requirements will become effective one year after date of enactment. To the extent practicable, use of existing State motor vehicle inspection and testing facilities is encouraged, but it is not required.

If, at any time a State plan becomes adequate to attain and maintain the national ambient air quality standards in timely fashion without reliance on vehicle inspection and maintenance, then such a system would not be required.

SECTION 211 -- COSTS OF VAPOR RECOVERY

Regulations promulgated under the existing Clean Air Act require the installation of vapor recovery devices at retail gasoline stations in certain highly polluted areas. The purpose of the requirements is to control hydrocarbon emissions which result when the distributor of fuel delivers it to storage tanks at the gasoline station and when the retailer fills the ultimate consumer's gasoline tank from the gas pump.

This section provides that the costs of vapor recovery systems would be borne by the owner of the storage tanks and pumps, not by the franchised retailer. This section also prohibits the owner of the tanks and pumps from transferring the costs of vapor recovery to the retailer. The distributor is required to reimburse the retailer for any such costs incurred prior to date of enactment. Finally, the section permits a four-year phase-in period for small independent marketeers to install vapor recovery systems where required.

SECTION 212 -- TESTING BY SMALL MANUFACTURERS

This section exempts vehicle manufacturers with projected annual U.S. sales of 300 or less from the requirement for 50,000-mile certification testing of such vehicles.

SECTION 213 -- CALIFORNIA WAIVER

This section is intended to broaden and strengthen the State of California's authority to prescribe and enforce separate new motor vehicle emission standards from the Federal standards. The authority which California has under existing section 209 of the Act is not limited in any respect by this provision. Rather, it permits the State to have its standards considered as a package and would require the Administrator in most instances to waive the preemption under section 209 with respect to California's standards. The Administrator would be authorized to deny such waiver only if (1) California's judgment that its standards, considered together, are at least as protective of health and welfare as Federal standards, considered together, was arbitrary and capricious; or (2) one of the findings under existing section 209(b) is made. The amendment thus confers broad discretion on the State of California to weigh the degree of health hazards from various pollutants and the degree of emission reduction achievable for various pollutants with various emission control technologies and standards.

SECTION 214 -- LOW-EMISSION VEHICLES

In order to encourage development of low-emission vehicles the 1970 Clean Air Act provided for Federal procurement of such vehicles. This section provides that such vehicles should be considered as suitable substitutes for existing vehicles, even if a full range of potential uses is not achievable by each low-emission vehicle.

SECTION 215 -- REMOVAL OR TAMPERING WITH CERTAIN DEVICES

This section expands the existing prohibition on removal or rendering inoperative of pollution control devices or systems which are needed to meet new motor vehicle emission standards. Under current law, only manufacturers or dealers are subject to this prohibition after sale and delivery of the vehicle to the ultimate purchaser. Under this section any person engaged in the business of vehicle repair or service who knowingly takes such action would be subject to a civil penalty, thus including independent gas stations and garages. If the person taking such action is an individual working on his own vehicle, that action would not constitute a violation.

This section also provides that use of parts other than original equipment manufacturer parts for purposes of repair or replacement would not be construed in and of itself to constitute prohibited tampering with emission control systems, devices, or elements of design.

SECTION 216 -- HIGH ALTITUDE PERFORMANCE ADJUSTMENTS

This section authorizes adjustments to the emission control system of any vehicle or engine which improve fuel economy performance while not harming the emission control performance of the system. Under existing law, questions have been raised about whether such adjustments are prohibited by the anti-tampering prohibition. Also this section requires vehicle manufacturers (or the Administrator) to publish instructions as to how much adjustments can be made. The Committee's intended purpose in adopting this provision was to encourage adjustments which would both improve emission control performance and benefit fuel economy.8/

SECTION 217 -- PARTS STANDARDS; PREEMPTION OF STATE LAW

This section provides that if a Federal part certification program is established under section 209 of the bill, then any part certified under the Federal program would not have to be recertified under any State or local program.

SECTION 218 -- FILL PIPE STANDARDS

This section authorizes the Administrator to prescribe fill pipe standards for new motor vehicles to assure effective connection between the fill pipe and any certified vapor recovery system. Adequate lead time must be allowed for compliance with these standards. The Administrator would not be authorized to regulate motor vehicle styling or body design.

SECTION 219 -- ONBOARD HYDROCARBON TECHNOLOGY

This section would require the Administrator to consider the feasibility and desirability from a cost/effectiveness viewpoint of prescribing standards for new motor vehicles to require use of onboard hydrocarbon control technology to minimize or avoid the necessity for vapor recovery requirements. If he makes certain findings concerning costs, fuel economy, feasibility, etc., he is directed to promulgate such standards. Adequate lead time must be allowed for compliance. Regulations could be disapproved by the Secretary of Transportation on a finding that a hazard to safety would be created.

SECTION 301 -- REDESIGNATION OF AIR QUALITY CONTROL REGIONS

This section authorizes the Governor of each State to revise the boundaries of air quality control regions designated under the 1970 Act. Under existing law, no such boundary revisions are authorized.

The boundary revisions are to be effective only with the approval of the Administrator (and, in certain instances, the approval of Governors of nearby States which may be affected by any such revision).

SECTION 302 -- CONSULTATION

The current Clean Air Act requires air pollution control plans to be devised and implemented primarily at the State level. This has left

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8/ See footnote 2.

many local governmental units and regional agencies with a limited (or no) role in the process, although the plans adopted by the States may have significant effects on local governments and metropolitan areas.

Section 302 is intended to correct this situation. It requires a consultation process to be established within each State. The process must assure adequate opportunity for general purpose local governments and regional agencies to present their views prior to adoption of specified measures which are of particular concern to such governmental entities.

The consultation process may take a variety of forms, so long as it adequately involves local governments and regional agencies in the State's decision-making.

SECTION 303 -- DELEGATION TO LOCAL GOVERNMENT

Under the current Clean Air Act, if a State fails to adopt and implement an approved plan to meet national air quality standards, the Administrator is required to do so. In order to minimize the necessity for Federal enforcement, this provision would authorize the Administrator to delegate enforcement authority to local government in the case of a plan promulgated by the Administrator.

SECTION 304 -- EMPLOYMENT EFFECTS

This section contains a provision, like that in the Federal Water Pollution Control Act, for the Administrator to investigate, report and make advisory recommendations concerning employer allegations that requirements under the Clean Air Act will adversely affect employment. No sanction or enforcement authority is provided under this section.

SECTION 305 -- ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

This section establishes comprehensive procedures for most informal rulemaking under the Clean Air Act, which would apply in lieu of the Administrative Procedure Act. The section (a) specifies the rules and actions to which such procedures will apply; (b) provides for establishment of a rulemaking docket for each of these rules or actions; (c) indicates what the record will be for the Administrator in prescribing the rule and for the courts in reviewing the rule; (d) establishes procedural rights and opportunities for public participation in the rulemaking process, including opportunities for cross-examination on material issues of disputed fact; (e) provides the standards of judicial review, including the "substantial evidence" test; (f) modifies certain deadlines for promulgation of rules; and (g) extends to 60 days the period of petitioning for judicial review of any such rule.

SECTION 306 -- EMPLOYEE PROTECTION

This section establishes a new section 317, like the provision of the Safe Drinking Water Act, to protect employees from retaliatory action by employers, if the employee is assisting in the administration of, or exercising rights under, the Clean Air Act.

SECTION 307 -- NOTICE TO STATES IN CASE OF CERTAIN INSPECTIONS, ETC.

This section, like a comparable provision in the Safe Drinking Water Act, requires the Administrator to give notice to States prior to undertaking certain actions, including inspections, where the Administrator intends to check on compliance with a standard adopted by the State and approved by the Administrator.

SECTION 308 -- EMERGENCY PROVISIONS

This section, like the previous section, requires the Administrator to consult with States prior to commencing any emergency action. The section also authorizes issuance of emergency orders where public health cannot be adequately protected solely by initiating a suit for injunctive relief

SECTION 309 -- INTERSTATE POLLUTION ABATEMENT

This section provides for a system of interstate notification and permits for major new sources which may significantly contribute to interstate air pollution. It also provides a mechanism for resolving disputes on abatement of interstate air pollution.

SECTION 310 -- INTERAGENCY COOPERATION ON PREVENTION OF ENVIRONMENTAL CANCERS, HEART AND LUNG DISEASE

This section requires creation of an interagency task force to promote increased cooperation between EPA and HEW to quantify the relationship between environmental pollution and cancer, heart and lung disease and to find methods for preventing environmentally-induced cancer, heart, and lung diseases.

SECTION 311 -- CIVIL LITIGATION

This section, like a comparable provision in the Federal Trade Commission Act, authorizes attorneys appointed by the Administrator to represent the Agency in civil litigation under this Act. The Administrator's attorneys would not be authorized to appear in criminal cases (nor in the Supreme Court if the Solicitor General agrees to appear on behalf of the Agency).

This section also provides that the courts may award reasonable attorneys fees to any person against whom the Administrator acts unreasonably in initiating an enforcement action. Attorneys fees and other costs (witness fees, etc.) could also be awarded in judicial review proceedings under section 307 of the Act.

SECTION 312 -- FINE PARTICULATE STUDY

This section requires the Administrator to study and report to Congress in 18 months on health hazards and means of controlling fine particulates. The National Academy of Sciences is to participate in this study. This study is to be coordinated with the study under section 101 and the standards review process under section 110 of the bill.

SECTION 313 -- AIR QUALITY MONITORING

This section requires the Administrator to promulgate regulations establishing a standard air quality index for monitoring and reporting of air quality data by State and local governments. It also requires the Administrator to supplement State and local monitoring stations with Federal stations where necessary.

SECTION 314 -- TECHNICAL AND CONFORMING AMENDMENTS

This section includes miscellaneous technical and conforming amendments.

SECTION 315 -- RESEARCH NOT AUTHORIZED

This section makes clear that no moneys authorized to be appropriated under this Act may be used by the Administrator for research. Research authorizations are within the jurisdiction of the Committee on Science and Technology.

SECTION 316 -- STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

This section requires the Council on Environmental Quality to conduct a study and to report to Congress on economic measures which might be used to encourage greater or more efficient emission reductions.

SECTION 317 -- LOSS OF PAY PROHIBITED IN CERTAIN CASES

This section provides that one of the conditions for use of supplemental or interim control measures or other dispersion enhancement methods would be that the owner or operator of the source proposing to use such measures or methods agree not to make employees bear any of the costs of periodic shutdowns or production curtailments which may result from use of such methods or measures.

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